

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

DONALD ISAAC JOHNSON,

Plaintiff,

v.

STATE OF WASHINGTON,

Defendant.

CASE NO. 3:15-CV-05483-RBL-DWC

REPORT AND RECOMMENDATION

Noting Date: October 30, 2015

Plaintiff Donald Isaac Johnson filed this civil rights complaint under 42 U.S.C. § 1983 *pro se*. Dkt. 1-1. His Application to Proceed *In Forma Pauperis* (IFP) remains pending. Dkt. 5. Plaintiff alleges he was unlawfully charged and convicted by the State of Washington in Washington Court of Appeals Case No. 44194-2-II (Pierce County Superior Court Case No. 12-1-01235-2, the “Pierce County Case”). Dkt. 1-1. Plaintiff claims to be unlawfully imprisoned pursuant to that conviction, and seeks twenty-five million dollars and one cent from the State of Washington. *Id.* at 3-4, 6. Plaintiff’s habeas corpus before this Court challenging his conviction in the Pierce County Case was dismissed with prejudice on September 28, 2015. *See* Dkt. 15, 16

1 in Case No. 15-5435. Plaintiff was ordered to show cause why this Court should not deny his
 2 Application to Proceed *IFP*. Dkt. 6.

3 DISCUSSION

4 A review of Plaintiff's litigation history shows on three previous occasions, he obtained
 5 *in forma pauperis* status and sought to challenge the on-going state court proceedings and
 6 conviction in the Pierce County Case: (1) *Johnson v. Gildehaus*, Case No. 12-5818 RBL-KLS;
 7 (2) *Johnson v. State of Washington*, Case No. 12-5839 BHS-KLS; and (3) *Johnson v. State of*
 8 *Washington*, Case No. 12-5864 RBL-JRC.¹ In a fourth filing before this Court, in *Johnson v.*
 9 *Monroe Correctional Complex*, Case No. 13-5167 RBL-JRC, Plaintiff again attempted to
 10 challenge his conviction in the Pierce County Case and the Court denied Plaintiff's application to
 11 proceed *in forma pauperis*. Dkts. 3 and 5 in Case No. 13-5167. The Court also found his
 12 repetitive filings on the same issue vexatious and malicious, and warned Plaintiff that further
 13 improper filings could result in sanctions (including monetary fines, dismissal of actions, and
 14 possibly a bar order preventing further filings). Dkts. 3 and 5 in Case No. 13-5167. The Court
 15 dismissed Case No. 13-5167 without prejudice to allow Plaintiff's first Petition for writ of
 16 habeas corpus (Plaintiff's "First Petition," *Johnson v. Monroe Correctional Complex*, Case No.
 17 13-5008 RBL-JRC) to proceed. Dkts. 3 and 5 in Case No. 13-5167.

18 Plaintiff's First Petition was dismissed for lack of personal jurisdiction. Dkt. 16 in Case
 19 No. 13-5008. Plaintiff then filed a second Petition for writ of habeas corpus in June 2015
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22 ¹ In Case No. 12-5818 and Case No. 12-5839, Plaintiff sought to challenge the on-going
 23 criminal proceedings in the Pierce County Case. And in Case No. 12-5864, Plaintiff sought
 24 release from imprisonment and dismissal of all pending criminal charges related to the Pierce
 County Case.

1 (“Second Petition”), which was dismissed with prejudice on September 28, 2015. *See Johnson v.*
 2 *Gilbert*, Case No. 15-5435 RBL-KLS.

3 On July 10, 2015, Plaintiff filed this action and an identical action in *Johnson v. State of*
 4 *Washington*, Case No. 15-5488-RJB. In Case No. 15-5488, the Court denied Plaintiff’s
 5 application to proceed *in forma pauperis* on the grounds that the complaint is frivolous,
 6 malicious and fails to state a claim. Dkt. 9 in Case No. 15-5488.

7 Here, the Court reiterates, Plaintiff cannot bring a § 1983 action for damages related to
 8 his imprisonment unless and until his state court judgment has been invalidated, expunged, or
 9 otherwise impugned. *Heck v. Humphrey*, 512 U.S. 477, 486-87 (1994). This has not occurred
 10 and Plaintiff’s Second Petition was dismissed with prejudice. *See Johnson v. Gilbert*, Case No.
 11 15-5435. Because he has been repeatedly advised and was warned that further filings of this
 12 nature could result in sanctions including monetary fines, dismissal of actions, and possibly a bar
 13 order preventing further filings, Plaintiff was ordered to show cause why the Court should not
 14 deny his Application to Proceed *IFP*. Plaintiff failed to respond to the Court’s Order. The Court
 15 finds Plaintiff’s Complaint is frivolous, malicious, and fails to state a claim upon which relief
 16 may be granted.

17 CONCLUSION

18 Based on the foregoing, the Court recommends Plaintiff’s Application to Proceed *IFP* be
 19 denied on the grounds that his Complaint is frivolous, malicious, and fails to state a claim upon
 20 which relief may be granted and the dismissal count as a strike under 28 U.S.C. § 1915(g). *See*
 21 *O’Neal v. Price*, 531 F.3d 1146, 1153 (9th Cir.2008) (when denial of a motion to proceed IFP is
 22 “on the grounds that the complaint is frivolous, malicious, or fails to state a claim upon which
 23 relief may be granted, such a complaint is ‘dismissed’ for purposes of § 1915(g)”).

1 Pursuant to 28 U.S.C. § 636(b)(1) and Rule 72(b) of the Federal Rules of Civil
2 Procedure, the parties shall have fourteen (14) days from service of this Report to file written
3 objections. *See also* Fed. R. Civ. P. 6. Failure to file objections will result in a waiver of those
4 objections for purposes of appeal. *Thomas v Arn*, 474 U.S. 140 (1985). Accommodating the time
5 limit imposed by Rule 72(b), the Clerk is directed to set the matter for consideration on October
6 30, 2015 as noted in the caption.

7 Dated this 13th day of October, 2015.

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10 David W. Christel
United States Magistrate Judge
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